



Appeal Decisions

Site visit made on 22 August 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2023

Appeal A: APP/C1435/C/22/3307053

Land at Dunly Wood, Mayfield Road, Cross-in-Hand, Heathfield, East Sussex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Matthew Rideout of Rideout Agricultural Limited against an enforcement notice issued by Wealden District Council.
 - The enforcement notice was issued on 10 August 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, change of use of the Land from agricultural to a mixed use for agricultural, forestry and as a contractor's yard, with the associated storage of contractor's plant, vehicles, machinery, materials, tools, equipment, porta-cabins and shipping containers.
 - The requirements of the notice are: (i) Stop using the Land and buildings as a contractor's yard, including the storage of contractor's plant, vehicles, machinery, materials, tools and equipment. (ii) Remove all contractor's plant, vehicles, machinery, materials, tools and equipment associated with the unauthorised use from the Land including, but not limited to, all tanks, building materials, stockpiles of aggregates, tyres and wheels, machinery parts, pipework and bowzers, pre-case concrete pipes and blocks, shipping containers and porta-cabins. (iii) Disconnect and remove the treatment plant and all connecting pipework and connections from the Land. (iv) Re-grade the area from where the treatment plant has been removed to marry in with the existing undisturbed contour of the adjacent bank. (v) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/C1435/W/22/3307047

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Matthew Rideout of Rideout Agricultural Limited against the decision of Wealden District Council.
 - The application Ref WD/2021/2836/FR dated 17 December 2021, was refused by notice dated 27 June 2022.
 - The development proposed is described as: Change of use of the existing forestry / agricultural building to a 'Sui Generis' mixed use of forestry, agriculture and contractors yard, to include mezzanine floor for office use. Retention of surrounding yard area for same proposed use and creation of an impermeable machinery and equipment wash down area with drainage to a waste water treatment plant.
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Summary of Decisions

Appeal A

1. The appeal is allowed and the enforcement notice is quashed.

Appeal B

2. The appeal is allowed.

Appeals A and B – the ground (a) appeal and refusal of planning permission

Main Issues

3. The main issues are:
 - i. the effect of the development on the character and appearance of the area, having particular regard to the High Weald Area of Outstanding Natural Beauty (the AONB) and ancient semi-natural woodland (ASW); and,
 - ii. the effect of the development on ecology and biodiversity.

Reasons

4. The site is accessed via an existing track and forms part of a woodland clearing. There is a large existing building. The site is located close to a nearby settlement and there are sporadic developments in the vicinity, such as a builder's merchants. It is located within the AONB.
5. The development before me relates to a mixed use to include a contractor's yard, with storage of plant and machinery and associated portacabins and shipping containers as well as wash down area. For the purposes of my assessment, I will be restricting myself to the area for which planning permission was applied for, given the land affected by the notice covers an extensive area.

Character and appearance

6. The site is situated in effectively a bowl that is surrounded by woodland. The large existing building has been utilised as a workshop and office, with areas of hardstanding surrounding it to accommodate the storage of plant and machinery, including associated shipping containers. Whilst at the time of my site visit some storage and parking had moved beyond the extent of the appeal application boundary, the area applied for is well contained around the existing building and reasonably compact.
7. Given the approach down to the site via the existing track, and its confines, surrounded by trees, whilst there is some urbanising effect within the immediate confines of the site, there are very limited longer distance viewpoints of the site or from the public realm. Any harm to the intrinsic character of the AONB is therefore very limited.
8. Whilst great weight should be given to conserving and enhancing the landscape and scenic beauty of AONB's, on-balance, the character and appearance of the AONB is preserved, noting also the presence of the large existing building and the existence of the nearby builder's merchants, which results in an area of

mixed character. The development therefore respects this character and is not injurious.

9. The ASW is a valuable natural asset. However, Natural England have since updated their records as it was held that ASW status could not reasonably be applied to the wider footprint associated with a racetrack, which was an area used for this purpose in the 1960's. This means that the area applied for is not within the ASW, and it appeared to me during my site visit that there is a suitable buffer around it. This is a view also shared in the arboricultural statement.
10. There is then very limited evidence that the development would increase vehicle activity and further increase air, water and other such pollutions, including vibration, to the detriment of the surrounding AONB or ASW.
11. On this basis, I am not persuaded that the development has resulted in the material deterioration of the character, natural beauty, integrity or function of the AONB or ASW. It has not resulted in the loss of ASW.
12. Furthermore, planning conditions present the opportunity, by means of landscaping and an operational management plan, to secure a long term package of enhancements and control the extent of operations.
13. I conclude the development is not harmful to the AONB or ASW and therefore accords with saved Policies EN6, EN13, EN27 and DC7 of the adopted Wealden Local Plan 1998 (the LP) and Policy SPO1 of the Wealden District Core Strategy Local Plan 2013 (the CS). These policies, amongst other things, require development to conserve or enhance the natural beauty and character of the landscape, not involve clear felling of ASW, respect the character of adjoining development, the buildings form is in keeping with its surroundings and manage the distinct landscape of the District. For the same reasons it accords with the conserving and enhancing the natural environment objective of the National Planning Policy Framework (the Framework).

Ecology

14. A phase 1 habitat survey has been produced, but it is contended by the Council that this is insufficient and needs updating. A preliminary ecological appraisal has then been produced for the purposes of these appeals.
15. That appraisal concludes that the site is not subject to any statutory or non-statutory designations, aside from the AONB and adjoining ASW. No further targeted species surveys were then recommended.
16. In light of this, I am not persuaded that any increased activities associated with the site would lead to harm to ecology and biodiversity interests or that there is insufficient evidence concerning protected species and any surrounding waterbodies.
17. Even if I were to accept that there has been some direct or indirect degradation arising from the use of the site, the recommendations of the appraisal, which can be the subject of planning conditions, would in any event result in mitigation and/or enhancement.
18. I conclude the development is not harmful to ecology and biodiversity interests and therefore accords with Policy EN15 of the LP and Policies SPO1 and WCS14

of the CS. These policies, amongst other things, require development to not adversely affect sites of nature conservation value, protect and enhance recognised biodiversity and prevent a net loss of biodiversity. For the same reasons it accords with the conserving and enhancing the natural environment objective of the Framework.

Other considerations

19. I accept the need for this agricultural contractor's yard, and associated derivatives, to be located in a more rural location, given the area it serves. Whilst there is not a footpath connecting the site to the nearby settlement, it is in close proximity and then accessed by the A267. I then have very limited evidence that the development would give rise to an unacceptable impact on highway safety.
20. In light of this and my findings in respect of the main issues, it is therefore a sustainable rural business which contributes appreciably towards employment and the local economy. Furthermore, it would then accord with the building a strong, competitive economy objective of the Framework. These are considerations which cumulatively attract considerable weight. Moreover, the use does not harmfully contravene the business strategy of the LP or spatial planning objectives of the CS, and relevant policies contained therein including GD2, EN1, DC7, SPO7, SPO13 and WCS14. Any other contravention thus only attracts limited weight and so is accordingly not outweighed.
21. I note the comments made by the Environment Agency but find that matters concerning the wash down area, attenuate surface water flows and foul water disposal can then be dealt with by means of suitably worded planning conditions. This would also protect the ASW. Accordingly, the development would accord with saved Policy CS2 of the LP.

Planning conditions

22. The Council has provided a list of suggested planning conditions in the event I was to allow the appeals. Each of the suggested planning conditions are then relevant and necessary in the interests of proper planning, the character and appearance of the area, surface and foul water disposal and ecology. Five of those conditions would then require the use to cease and the developments removed from the site should they not be complied with.
23. The appellant is then agreeable to those conditions, and I find that 6 months is an adequate timeframe to dovetail the various requirements and obligations of the conditions.
24. In respect of Appeal A, there will be no plans condition as the planning permission arises from the deemed planning application. However, the land affected by the notice covers an extensive area, and it is therefore necessary for a condition to restrict the approved use to the same area for which planning permission was applied for. This can be achieved by reference to the Location Plan submitted with the appeal planning application.

Conclusion

25. For these reasons and having regard to all other relevant matters raised, I conclude that the ground (a) appeal and appeal against the refusal of planning permission should succeed.

Overall Conclusion

26. For the reasons given above I conclude that the appeals should succeed. The enforcement notice will be quashed and planning permissions granted, subject to conditions. The appeal on ground (g) does not therefore need to be considered.

Formal Decisions

Appeal A

27. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of the Land from agricultural to a mixed use for agricultural, forestry and as a contractor's yard, with the associated storage of contractor's plant, vehicles, machinery, materials, tools, equipment, porta-cabins and shipping containers at Land at Dunly Wood, Mayfield Road, Cross-in-Hand, Heathfield, East Sussex referred to in the notice, subject to the following schedule of planning conditions (Schedule A).

Appeal B

28. The appeal is allowed and planning permission is granted for the change of use of the existing forestry / agricultural building to a 'Sui Generis' mixed use of forestry, agriculture and contractors yard, to include mezzanine floor for office use. Retention of surrounding yard area for same proposed use and creation of an impermeable machinery and equipment wash down area with drainage to a waste water treatment plant at Land at Dunly Wood, Mayfield Road, Cross-in-Hand, Heathfield, East Sussex in accordance with the terms of the application, Ref WD/2021/2836/FR, dated 17 December 2021, subject to the following schedule of planning conditions (Schedule B).

Paul T Hocking

INSPECTOR

Appeal A: Schedule of Planning Conditions A

1. The use and development hereby permitted shall be restricted to the area edged red on the Location Plan Ref: LP001, produced on 28 October 2021.
2. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 6 months of the date of this decision, a scheme for landscaping shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
3. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 6 months of the date of this decision, full details of the proposed means of surface water disposal shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
4. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 6 months of the date of this decision, full details of the proposed means of foul water disposal shall have been submitted for the written

approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.

ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

5. Within 6 months of the date of this decision, an Ecological Design Strategy, which shall identify key species within the area could benefit from the restoration of the ancient semi-natural woodland, shall be submitted to and approved in the writing by the Local Planning Authority.
6. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 6 months of the date of this decision, a Landscape and Ecological Management Plan, based on the findings of the Ecological Design Strategy in order to detail how the woodland would be managed in both the short and long terms to maximize its potential for biodiversity gain, shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
7. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 6 months of the date of this decision, an Operational Management Plan, which shall details the requirements of the commercial activities within the site and include prevention of spreading invasive species beyond the site, i.e. through wheel washing, and also limiting impacts of disturbance by noise, vibration, air and light pollution, shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.

- ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
8. Prior to the installation of any external lighting to the site, details shall first be submitted to and approved in writing by the Local Planning Authority. The details should provide for lighting that is low level, hooded and directional. External lighting shall only be installed and maintained in accordance with the approved details.

Appeal B: Schedule of Planning Conditions B

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
LP001 (Location Plan)
BP001 (Block Plan)
EFPV2 (Parts Store Elevation & Floor Plan)
FP001 (Current Floor Plan)
2. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 6 months of the date of this decision, a scheme for landscaping shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
3. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 6 months of the date of this decision, full details of the proposed means of surface water disposal shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
4. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous

condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

- i. Within 6 months of the date of this decision, full details of the proposed means of foul water disposal shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
- ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

5. Within 6 months of the date of this decision, an Ecological Design Strategy, which shall identify key species within the area could benefit from the restoration of the ancient semi-natural woodland, shall be submitted to and approved in the writing by the Local Planning Authority.
6. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 6 months of the date of this decision, a Landscape and Ecological Management Plan, based on the findings of the Ecological Design Strategy in order to detail how the woodland would be managed in both the short and long terms to maximize its potential for biodiversity gain, shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
7. The use of the site hereby permitted shall cease and all associated development, including the hardstanding apron, and vehicles, plant, machinery, equipment and materials brought onto the land for the purposes of such use shall be removed and the land reinstated to its previous condition within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i. Within 6 months of the date of this decision, an Operational Management Plan, which shall details the requirements of the commercial activities within the site and include prevention of spreading invasive species beyond the site, i.e. through wheel washing, and also limiting impacts of disturbance by

noise, vibration, air and light pollution, shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.

ii. If within 11 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

8. Prior to the installation of any external lighting to the site, details shall first be submitted to and approved in writing by the Local Planning Authority. The details should provide for lighting that is low level, hooded and directional. External lighting shall only be installed and maintained in accordance with the approved details.